



U.S. Immigration
and Customs
Enforcement

June 21, 2018

The GEO Group, Inc.
(b) (6), (b) (7)(C), Executive VP, Contract Admin
One Park Place, Suite 700
621 Northwest 53rd Street
Boca Raton, Florida 33487

Subject: Denial of Request for Equitable Adjustment for Contract No. HSCEDM-11-D-00003 Aurora Contract Detention Facility, CO dated April 18, 2018

Dear Ms. (b) (6), (b) (7)(C),

Immigration and Customs Enforcement (ICE)/Office of Acquisition Management (OAQ) received a Request for Equitable Adjustment (REA) from The GEO Group, Inc. (GEO) dated April 18, 2018, for Contract No. HSCEDM-11-D-00003, Aurora ICE Processing Center. Specifically, the REA is for legal fees and expenses incurred by GEO through March 31, 2018 in the amount of \$1,928,433.38 in connection with the defense of the lawsuit *Menocal v. The GEO Group, Inc.*, No. 1:14-cv-02887-JLK-MEH pending in the U.S. District Court for the District of Colorado.

GEO is submitting the REA under Contract No. HSCEDM-11-D-00003, Changes Clause at FAR 52.243-1, Alt. I (Apr 1984), for a "constructive change due to incomplete performance specifications and standards." GEO included a four-page attachment to the REA that had numerous items recording invoices submitted by several entities, including: Norton Rose Fulbright; Precision Discovery; Burns, Figa & Will; Holland & Knight; and Vaughan & DeMuro. These invoice entries are marked as related to the case of *Alejandro Menocal et al v. The GEO Group, Inc.*. The fees and expenses for all invoices total \$1,928,433.38. GEO noted in the REA that Norton Rose Fulbright is GEO's primary law firm and that this firm is assisted by local counsel and an e-discovery service provider. No other supporting documentation was provided with the REA.

ICE/OAQ has carefully reviewed the REA and finds no legal basis to pay any part of the request. Therefore, I have determined that the REA should be denied in its entirety. The basis for this determination is as follows:

1. There have been no constructive changes to the terms of the Contract. A constructive change occurs when a contractor performs work beyond the contract requirements, without a formal order under the Changes clause, either due to an informal order from or through the fault of the Government. *See Nu-Way Concrete Co., Inc. v. Dep't of Homeland Security*, CBCA No. 1411, 11-1 BCA ¶ 34636, (2010). The contractor has the

burden of demonstrating a constructive change. *Id.* Although GEO's REA cites to the Changes Clause at FAR 52.243-1, Atl. 1, GEO fails to identify any express changes in the terms of the Contract and fails to show a constructive change. In fact, there have been no relevant changes to the terms or scope of the Performance Work Statement (PWS) and the contracting officer has not required the contractor to perform work beyond the requirements of the contract terms. (Contract, Section G-2.). The FAR 52.243-1 clause for Changes – Fixed-Price (Aug 1987) – Alternate I (Apr 1984) was incorporated by reference into the contract at Section I – Contract Clauses, at contract inception in 2011. This is a firm-fixed price performance-based contract. As such, the risk of performance, including the burden of administering the contract, falls to the contractor. Where there is no change to the contract, whether expressly or constructively, an equitable adjustment is not appropriate.

2. The performance specifications and standards are not “incomplete” and are not defective. The Contract, as awarded in 2011, included a requirement to house detainees and perform related detention service in accordance with the Performance Based National Detention Standards (PBNDS). (Contract, Section H-5, item 10.). Specifically, the contract is clear about the terms and conditions of the Voluntary Work Program. The PBNDS outlines the purpose, scope, and expected outcomes of the program (PBNDS 2008 at Part 5, § 33 and see PBNDS 2011 (2016 Revisions) at Part 5.8, as incorporated in Mod P00026). Furthermore the award document and contract line item structure set forth the rate of reimbursement for the program. (OF 336, CLIN x004, dated September 15, 2011). Accordingly, the service provider has been on notice about these terms since contract inception, when the performance based contract was negotiated.
3. GEO's legal fees and expenses are not cognizable costs under the contract terms or under FAR 31.205-47. Under the terms of the contract, GEO is required to provide detention services and ensure compliance with all applicable federal, state, and local work safety laws and regulations. (Contract, Section H-5 and H-17). GEO's defense of these private lawsuits is a defense of its contract performance.

Based on the above, GEO's REA is denied in its entirety. As a threshold matter, GEO has failed to show its entitlement to such a modification under the contract terms or applicable laws and regulations. Additionally, GEO has failed to address the reasonableness or provide adequate supporting data for the quantum sought. While the government denies this REA in its entirety, please note that disputes under this contract are governed by the FAR 52.233-1 - Disputes and the Contract Disputes Act (41 U.S.C. §§ 7101-7109).

If you have any questions regarding this matter, please contact me at (202) 732-(b) (6), (b) (7)(C) or by email at (b) (6), (b) (7)(C)@ice.dhs.gov

Very Respectfully,

(b) (6), (b) (7)(C)

Contracting Officer

www.ice.gov



U.S. Immigration
and Customs
Enforcement

June 21, 2018

The GEO Group, Inc.
(b) (6), (b) (7)(C), Executive VP, Contract Admin
One Park Place, Suite 700
621 Northwest 53rd Street
Boca Raton, Florida 33487

Subject: Denial of Request for Equitable Adjustment for Contract no. HSCEDM-15-D-00015, Northwest Detention Center dated April 18, 2018

Dear Ms. Martin,

Immigration and Customs Enforcement (ICE)/Office of Acquisition Management (OAQ) received a Request for Equitable Adjustment (REA) from The GEO Group, Inc. (GEO) dated April 18, 2018, for contract No. HSCEDM-15-D-00015, Northwest Detention Center. Specifically, the REA is for legal fees and expenses incurred by GEO through March 31, 2018 in the amount of \$595,160.69 in connection with the defense of the lawsuits *State of Washington v. The GEO Group, Inc.*, No. 3:17-cv-05806-TLF, pending in the U.S. District Court for the Western District of Washington, and *Chen v. The GEO Group Inc.*, No. 3:17-cv-05769-RJB, pending in the U.S. District Court for the Western District of Washington.

GEO is submitting the REA under contract No. HSCEDM-15-D-00015, Changes Clause at FAR 52.243-1, Alt. 1 (Apr 1984) for a "constructive change due to incomplete performance specifications and standards." GEO included a one-page attachment to the REA that had nine-line items recording invoices submitted by Norton Rose Fulbright and III Branches, PLLC to GEO for the case of *Chao Chen v. The GEO Group, Inc.* The fees and expenses for all invoices total \$113,123.35. GEO also included another one-page attachment to the REA that had 16-line items recording invoices submitted by Norton Rose Fulbright, III Branches, PLLC and Precision Discovery. These invoice entries are marked as related to "Washington W&H Complaint." The fees and expenses for all invoices totaled \$482,037.44. GEO noted in the REA that Norton Rose Fulbright is GEO's primary law firm and that this firm is assisted by local counsel and an e-discovery service provider. No other supporting documentation was provided with the REA.

ICE/OAQ has carefully reviewed the REA and finds no legal basis to pay any part of the request. Therefore, I have determined that the REA should be denied in its entirety. The basis for this determination is as follows:

1. There have been no constructive changes to the terms of the contract. A constructive change occurs when a contractor performs work beyond the contract requirements,

without a formal order under the Changes clause, either due to an informal order from or through the fault of the Government. See *Nu-Way Concrete Co., Inc. v. Dep't of Homeland Security*, CBCA No. 1411, 11-1 BCA ¶ 34636, (2010). The contractor has the burden of demonstrating a constructive change. *Id.* Although GEO's REA cites to the Changes Clause at FAR 52.243-1, Alt. 1, GEO fails to identify any express changes in the terms of the contract and fails to show a constructive change. In fact, there have been no relevant changes to the terms or scope of the contract and the contracting officer has not required the service provider to perform work beyond the requirements of the contract terms. See Contract, Section G.1.1. The FAR 52.243-1 clause for Changes – Fixed-Price (Aug 1987) – Alternate I (Apr 1984) was incorporated by reference into the contract at Section I – Contract Clauses, at contract inception in 2015. This contract is a firm-fixed price performance-based contract. As such, the risk of performance, including the burden of administering the contract, falls to the contractor. Where there is no change to the contract, whether expressly or constructively, an equitable adjustment is not appropriate.

2. The performance specifications and standards are not “incomplete” and are not defective. The contract, as awarded in 2015, included a requirement to house detainees and perform related detention service in accordance with the Performance Based National Detention Standards (PBNDS). (Contract, Section C-Performance Work Statement, Section I.E.-Performance). Specifically, the contract is clear about the terms and conditions of the Voluntary Work Program. The PBNDS outlines the purpose, scope, and expected outcomes of the program (see PBNDS 2011 (2016 Revisions) at Part 5.8, as incorporated in Mod P00008). Furthermore the contract award document and contract line item structure set forth the rate of reimbursement for the program. (SF 26, CLINs x003, dated September 24, 2015). Accordingly, the contractor has been on notice about these terms since contract inception, when the performance-based contract was negotiated.
3. GEO's legal fees and expenses are not cognizable costs under the contract terms or under FAR 31.205-47. Under the terms of the contract, GEO is required to provide detention services and ensure compliance with all applicable laws, regulations, policies and procedures. (Contract, Section C-Performance Work Statement, I.D.-Partnership Philosophy, E.-Performance, and F.-Ambiguities). GEO's defense of these private lawsuits is a defense of its contract performance.

Based on the above, GEO's REA is denied in its entirety. As a threshold matter, GEO has failed to show its entitlement to such a modification under the contract terms or applicable laws and regulations. Additionally, GEO has failed to address the reasonableness or provide adequate supporting data for the quantum sought. While the government denies this REA in its entirety, please note that disputes under this contract are governed by FAR 52.233-1 - Disputes and the Contract Disputes Act (41 U.S.C. §§ 7101-7109).

If you have any questions regarding this matter, please contact me at (949) 425-(b) (6), (b) (7)(C) or by email at (b) (6), (b) (7)(C)@ice.dhs.gov

Thank you,

Very Respectfully,

(b) (6), (b) (7)(C)

Contracting Officer

U.S. Department of Homeland Security
24000 Avila Road, Suite 3104
Laguna Niguel, CA 92677



U.S. Immigration
and Customs
Enforcement

June 21, 2018

The GEO Group, Inc.
(b) (6), (b) (7)(C), Executive VP, Contract Admin
One Park Place, Suite 700
621 Northwest 53rd Street
Boca Raton, Florida 33487

(b) (6), (b) (7)(C)
Acting City Manager
City for Adelanto
10400 Rancho Road
Adelanto, CA 92301

Subject: Denial of Request for Equitable Adjustment for IGSA No. EROIGSA-11-0003 Adelanto Detention Facility, CA dated April 18, 2018

Dear Ms. (b) (6), (b) (7)(C) and Ms. (b) (6), (b) (7)(C),

Immigration and Customs Enforcement (ICE)/Office of Acquisition Management (OAQ) received a Request for Equitable Adjustment (REA) from The GEO Group, Inc. (GEO) dated April 18, 2018, for IGSA No. EROISA-11-0003, Adelanto Detention Facility, CA. Specifically, the REA is for legal fees and expenses incurred by GEO through March 31, 2018 in the amount of \$139,059.96 in connection with the defense of the lawsuit *Raul Novoa v. The GEO Group, Inc.*, No. 5:17-cv-02514-JGB-SHK pending in the U.S. District Court for the Central District of California.

GEO is submitting the REA under IGSA no. EROIGSA-11-0003, Changes Clause, Article X.B. for a "constructive change due to incomplete performance specifications and standards." GEO included a one-page attachment to the REA that had four-line items recording invoices submitted by Norton Rose Fulbright to GEO for the case of *Novoa, Raul, et al. v. GEO*. The fees and expenses for all invoices total \$139,059.96. GEO noted in the REA that Norton Rose Fulbright is GEO's primary law firm and that this firm is assisted by local counsel and an e-discovery service provider. No other supporting documentation was provided with the REA.

ICE/OAQ has carefully reviewed the REA and finds no legal basis to pay any part of the request. Therefore, I have determined that the REA should be denied in its entirety. The basis for this determination is as follows:

1. There have been no constructive changes to the terms of the IGSA. A constructive change occurs when a contractor performs work beyond the contract requirements, without a formal order under the Changes clause, either due to an informal order from or through the fault of the Government. *See Nu-Way Concrete Co., Inc. v. Dep't of Homeland Security*, CBCA No. 1411, 11-1 BCA ¶ 34636, (2010). The service provider has the burden of demonstrating a constructive change. *Id.* Although GEO's REA cites to the Changes Clause Article X.B., GEO fails to identify any express changes in the terms of the IGSA and fails to show a constructive change. In fact, there have been no relevant changes to the terms or scope of the IGSA and the contracting officer has not required the service provider to perform work beyond the requirements of the IGSA terms. This IGSA is a firm-fixed price performance-based contracting vehicle. As such, the risk of performance, including the burden of administering the IGSA, falls to the service provider. Where there is no change to the contract, whether expressly or constructively, an equitable adjustment is not appropriate.
2. The performance specifications and standards are not "incomplete" and are not defective. The IGSA, as awarded in 2011, included a requirement to house detainees and perform related detention service in accordance with the Performance Based National Detention Standards (PBNDS). (See IGSA, Article V). Specifically, the IGSA is clear about the terms and conditions of the Voluntary Work Program. The PBNDS outlines the purpose, scope, and expected outcomes of the program (PBNDS 2008 at Part 5, § 33 and see PBNDS 2011 (2016 Revisions) at Part 5.8, as incorporated in Mod P00024). Furthermore the IGSA award document and contract line item structure set forth the rate of reimbursement for the program. (SF 347, CLIN 0007, dated May 31, 2011). Accordingly, the service provider has been on notice about these terms since contract inception, when the performance-based contract was negotiated.
3. GEO's legal fees and expenses are not cognizable costs under the contract terms or under FAR 31.205-47. Under the terms of the IGSA, GEO is required to provide detention services and ensure compliance with all applicable laws, regulations, policies and procedures. (See IGSA, Article III.B.). GEO's defense of these private lawsuits is a defense of its contract performance.

Based on the above, GEO's REA is denied in its entirety. As a threshold matter, GEO has failed to show its entitlement to such a modification under the IGSA terms or applicable laws and regulations. Additionally, GEO has failed to address the reasonableness or provide adequate supporting data for the quantum sought. While the government denies this REA in its entirety, please note that disputes under this IGSA are governed by the Disputes Clause at Article X.C. and the Contract Disputes Act (41 U.S.C. §§ 7101-7109).

If you have any questions regarding this matter, please contact me at (949) 425-(b) (6), (b) (7)(C) or by email at (b) (6), (b) (7)(C)@ice.dhs.gov

Thank you,

Very Respectfully,

(b) (6), (b) (7)(C)&

Contracting Officer